APPENDIX.

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 12,606

MOHAWK REFINING CORPORATION, a Corporation, and JOHN E. C. STROUD, C. KENNETH JOHNES and WILLIAM L. ASHBY, Individually and as Officers of MOHAWK REFINING CORPORATION, *Petitioners*,

v.

FEDERAL TRADE COMMISSION, *Respondent*.

ON PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL TRADE COMMISSION.

Argued November 21, 1958

Before BIGGS, *Chief Judge*, and MARIS and MCLAUGHLIN, *Circuit Judges*.

OPINION OF THE COURT

(Filed February 12, 1959)

By BIGGS, *Chief Judge*.

The Federal Trade Commission charged that the petitioners, in violation of Section 5(a) of the Federal Trade Commission Act, 66 Stat. 632, 15 U.S.C. § 45(a)(1952), engaged in the business of "reclaiming used motor oil and in selling and distributing such lubricating oil, or a blend of such oil and new oil, in [interstate] commerce to jobbers and dealers for resale to the purchasing public"; that the

petitioners' oil consisted "in whole or in substantial part of used motor oil, obtained from drainings of motor crankcases and from other sources, which has been reclaimed by subjecting the used oil to a treatment designed to remove the impurities therefrom"; that the petitioners' "[O]il . . . [was] sold in containers of the same general size, kind and appearance as those used for new oil, and has the appearance of new and unused oil"; that "The containers have no markings of any kind indicating that . . . [the] product is reclaimed used oil"; and that the petitioners' practices mislead the dealers who in turn mislead the purchasing public into believing erroneously that the petitioners' oil is "new oil."

The proof offered before the Hearing Examiner demonstrates that the petitioners do not engage in the business of "reclaiming" used motor oil except as a necessary preliminary to their re-refining process, and that the petitioners' finished product results from a series of processes which may be defined as re-refining crankcase drainings of previously used lubricating oils to produce a finished motor lubricating oil though sometimes the oil re-refined is blended with "crude" oil not used prior to its use by the petitioners and sometimes called virgin oil.[1] It appears also that the petitioners' lubricating oil is sold by them in interstate commerce under various brand names in containers which do not disclose that the oil is re-refined from used oil and that many purchasers have been deceived or misled into buying the petitioners' oil thinking it to be oil refined from crude oil, virgin oil, not oil previously used in motor crankcases; that during each of the years 1954 and 1955 the petitioners sold approximately two million gallons of oil, from which they realized about $500,000; and that of this total between 75% and 90% represented oil produced by the

[1] Both witnesses and counsel, the Hearing Examiner and the Commission, on occasion have used the term "new oil" to refer to lubricating motor oil refined from virgin oil, crude oil and have employed the term "used oil" to refer to lubricating motor oil re-refined from used crankcase oil

petitioners by their re-refining processes as distinguished from crude oil purchased by them for blending purposes; and that the sales of the petitioners in interstate commerce were substantial and in competition with individuals, firms and corporations engaged in the production and sale of lubricating oil.

The record also shows that the Society of Automotive Engineers' viscosity rating of the petitioners' oils was up to the standards required by the trade, and no charge or implication was or is made that their oil was lacking in lubricating qualities, in efficiency, or in adaptability for the purpose for which it is sold, or was in any respect inferior to lubricating oil refined from crude oil, virgin oil. The proof shows also that many jobbers and members of the purchasing public prefer to buy oil refined from crude oil, virgin oil, as opposed to oil such as the petitioners' which has been re-refined from oil previously used, and that the public buys motor oil largely on the basis of price, believing that higher priced oils will give better service in a motor vehicle.

The Commission entered an order requiring the petitioners forthwith to cease and desist "from representing . . . that their lubricating oil is refined or processed from other than previously used oil" and from advertising, offering for sale or selling oil which has been "reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in advertising, in sales promotion material, and by a clear and conspicuous statement to that effect on the container." The petition to review followed.

The petitioners attack the opinion and the final order of the Commission as arbitrary and capricious and contend that each lacks substantial supporting evidence. They assert also that the Commission erred as a matter of law in holding that the failure to disclose the source or origin of the petitioners' finished product was a violation of Section 5 of the Federal Trade Commission Act. The petitioners contend as well that the Commission committed prejudicial

error in excluding from the record the testimony of certain witnesses and exhibits offered by them and in refusing to permit them to examine certain Commission records and correspondence on which, it is alleged, the Commission wrongfully relied.

It will be observed that there was a variance between the charge set out in the complaint and the proof in that the Commission charged the petitioners with selling "reclaimed" oil, as distinguished from "re-refined" oil. Even were the proceedings before the Commission conducted as strictly as a suit at law this variance would be deemed too insubstantial to be material. The evidence offered by the Commission's witnesses demonstrated that the petitioners produce their lubricating oil by re-refining and that the factor of reclamation was a minor one. The evidence shows also that without notification to the trade and to the customer that the petitioners' oil was not manufactured from crude oil, virgin oil, many persons in the trade and individual customers thought that the petitioners' product was manufactured from crude oil. The record proves further that such persons preferred to distribute and sell and to buy lubricating oil manufactured from crude oil or virgin oil, and not oil re-refined from crankcase oil, and thought that they were doing so. Accordingly, there was sufficient evidence upon which the Commission could find that dealers and the purchasing public were misled by a mistaken belief that petitioners' products were derived from crude oil.

It is true, as the petitioners point out and as the Commission found, that the petitioners' oil is as satisfactory for lubricating purposes as lubricating oil produced from crude oil or virgin oil, but this is beside the point. As was said by the Supreme Court through Mr. Justice Cardozo in Federal Trade Commission v. Algoma Lumber Co., 291 U.S. 67, 77-78 (1934): "We have yet to make it plain that the substitution would be unfair though equivalence were shown. . . . The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else. . . . In such matters, the public is entitled to get what it chooses, though

the choice may be dictated by caprice or by fashion or perhaps by ignorance. . . . Dealers and manufacturers are prejudiced when orders that would have come to them if the lumber had been rightfully named, are diverted to others whose methods are less scrupulous." Moreover, it does not serve to palliate the petitioners' offense by the fact that their sin was one of omission in failing to label the containers or make known to the purchasers that their oil was not produced from crude oil. Chief Judge Parker put this succinctly in P. Lorillard Co. v. Federal Trade Commission, 186 F.2d 52, 58 (4 Cir. 1950), when he said: "To tell less than the whole truth is a well known method of deception; and he who deceives by resorting to such method cannot excuse the deception by relying upon the truthfulness per se of the partial truth by which it has been accomplished."

The petitioners assert as a defense that there was no showing here of a specific and substantial public interest because their products are identical with all other finished motor oils as to composition, quality and utility and hence no harm can come to the purchasers or to the public generally. But as has been indicated the public is entitled to buy what it chooses. A manufacturer may not surreptitiously substitute his judgment for that of the purchaser as to the article to be purchased, even if the manufacturer's judgment is equal or even superior to that of the dealer or the customer. If this were not so, the substituted judgment of the manufacturer would always prevail over the will of the dealer or customer and the provision of the statute prohibiting unfair and deceptive practices would be emasculated. The public has the right to purchase motor oil manufactured from crude oil, if it desires to do so, and that desire may not be balked by a failure to disclose pertinent facts.

For the reasons stated the Commission did not err in striking from the record evidence of two expert witnesses of the petitioners who testified that it was not the industry practice to disclose to the trade or to the purchasing public

the sources of motor oils and that these are bought and sold on the basis of grades established by the Society of Automotive Engineers and service classifications made by the American Petroleum Institute. These facts are immaterial to the issue raised by the Commission or on the instant appeal. The fact that some dealers and some customers were not misled by the petitioners' practices, even if such persons were in large numbers, is irrelevant. As we have said the record amply demonstrates a desire on the part of the dealers and purchasing public not to dispense or buy motor oils re-refined from crankcase drainings. Cf. Federal Trade Com'n v. Winsted Co., 258 U.S. 483 (1922) and Independent Directory Corp. v. Federal Trade Com'n, 188 F.2d 468, 471 (2 Cir. 1951).

The petitioners also contend that the Commission committed error by withholding from them and from the record in the instant case correspondence between the Commission's staff and witnesses who appeared on behalf of the Commission. They assert that by such correspondence witnesses testifying on behalf of the Commission on the factual issue as to whether or not the public had a preference for motor oils refined from crude oil, virgin oil, as distinguished from motor oils re-refined from crankcase drainings, might have been and were unduly influenced. The petitioners assert also that, being deprived of this correspondence they were limited in their cross-examination.

The hearings before the Hearing Examiner began on September 20 and were concluded on December 11, 1956, being held on six different days. The fourth day of hearing was November 20. It then appeared, apparently for the first time, that witnesses appearing on behalf of the Commission had received the letters referred to. On that day petitioners' counsel moved orally that the Hearing Examiner require the Commissioner to produce all the correspondence.[2] The Hearing Examiner stated that though

[2] One letter, dated October 11, 1956, from the Federal Trade Commission to Topline Store was produced by trial counsel for the Commission from his file and was introduced as respondent's (here

he felt that the correspondence should be produced that he could not require the Commission to produce it. It was not until April 26, 1957 that the petitioners filed a motion with the Hearing Examiner that the correspondence should be produced and incorporated in the record. The matter was referred to the Commission. The Commission, by an administrative order dated May 10, 1957, denied the motion, stating that the information sought was confidential and the correspondence could be released only pursuant to the provisions of the Commission's Rules, Section 1.134(b).[3]

We cannot say that "good cause" was shown as to why the correspondence should have been produced. Petitioners' assertion that there was actual influence exerted by the Commission through the correspondence is not supported by the record. Petitioners' reference to testimony of witnesses who had received questionnaires establishes no more than that the witnesses were made aware through the questionnaires of re-refined, reprocessed, or reclaimed oil as distinguished from crude, virgin, oil.

Moreover, the formal motion for production and incorporation in the record was not made to the Hearing Examiner until more than four months after the termina-

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petitioners') exhibit No. 1. It is in the form of a questionnaire and dealt in substance with the issue of whether or not the motor oil was invoiced to Topline as re-refined oil and whether it was represented by Topline to its customers as re-refined oil and similar questions, with Topline's answers thereto.

[3] 16 C.F.R. § 1.134 (Supp. 1958) states: "§ 1.134 *Release of confidential information.* (a) Upon good cause shown, the Commission may by order direct that certain records, files, papers, or information be disclosed to a particular applicant.

"(b) Application by a member of the public for such disclosure shall be in writing, under oath, setting forth the interest of the applicant in the subject matter; a description of the specific information, files, documents, or other material inspection of which is requested; whether copies are desired; and the purpose for which the information or material, or copies, will be used if the application is granted. Upon receipt of such an application the Commission will take action thereon, having due regard to statutory restrictions, its rules, and the public interest."

tion of the hearings and nearly one month after the petitioners had submitted proposed findings of fact and conclusions of law to the Trial Examiner. The validity of the Commission's Rules of Practice is not questioned by petitioners and in view of the delay it was not error for the Commission, relying upon Section 1.134(b), to deny the motion. Cf. NLRB v. General Armature & Mfg. Co., 192 F.2d 316 (3 Cir. 1951); NLRB v. Adhesive Products Corp., 258 F.2d 403, 406 (2 Cir. 1958).

We can perceive no error in the Commission's decision. Consequently, it will be affirmed. An appropriate judgment will be entered in this court requiring the petitioners to comply with the order of the Commission.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

(Federal Trade Commission Docket 6432)

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

November Term, 1958

No. 5850

FRANK A. KERRAN and CAMERON A. KERRAN, Individuals and Copartners Trading and Doing Business as DOUBLE EAGLE REFINING COMPANY, *Petitioners*,

v.

FEDERAL TRADE COMMISSION, *Respondent*.

ON PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL TRADE COMMISSION

JOSH LEE (JOHN B. OGDEN was with him on the brief) for *Petitioners*.

E. K. ELKINS (EARL W. KINTNER, *General Counsel*, and JAMES E. CORKEY, *Assistant General Counsel*, were with him on the brief) for *Respondent*.

Before BRATTON, *Chief Judge*, and PICKETT and BREITENSTEIN, *Circuit Judges*.

BRATTON, *Chief Judge*.

This proceeding is here on petition to review an order of the Federal Trade Commission. Petitioners Frank A. Kerran and Cameron A. Kerran, partners doing business under the trade name of Double Eagle Refining Company,

at Oklahoma City, Oklahoma, are engaged in the business of re-refining previously used lubricating oil, principally crankcase drainings collected at gasoline stations; packaging the re-refined oil in tin cans of the same general size, kind, and appearance as those used for packaging lubricating oil produced directly from virgin crude; and selling the re-refined oil without indicating on the containers or otherwise that the commodity is produced from previously used oil. Some of the supply of previously used oil comes to the refinery of petitioners from other states, and some of the finished product is sold and distributed in interstate commerce. The order of the Commission required petitioners to cease and desist from representing, contrary to fact, that their lubricating oil is refined or processed from other than previously used oil; and from advertising, offering for sale, or selling lubricating oil that is composed in whole or in part of oil which had been reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in advertising and sales promotion material, and by a clear and conspicuous statement to that effect on the container.

The order is challenged upon the ground that the Commission erred in holding that the methods of competition employed by the petitioners are unfair, because the Commission did not base its decision upon all of the pertinent facts of record but upon only a minor part of them; because there is little likelihood that the public is misled since re-refined oil is identical to that which is refined directly from virgin crude; because when previously used oil is re-refined it loses its identity as previously used oil and is new oil in every sense of the term; and because the circumstances which must accompany seller silence in order for it to constitute an unfair method of competition are not present in the proceeding. It is the position of petitioners that lubricating oil does not wear out; that use does not change the chemical composition of the oil or its molecular structure but merely contaminates it; that contamination from use as well as additives put into the oil by the prior producer

are eliminated by the re-refining process; that the re-refined oil which petitioners sell is new oil; and that such re-refined product is the equivalent in quality of lubricating oil produced from virgin crude. Evidence was adduced at the hearing before the hearing examiner to the effect that lubricating oil does not wear out with use; that use does not change the chemical composition of the oil or its molecular structure but merely contaminates it; and that contamination from use as well as additives put into the oil by the prior producer are eliminated by the re-refining process. But the hearing examiner in the first instance found in effect that a substantial portion of the public who purchase lubricating oil prefer new and unused oil to that produced by the re-refining of crankcase drainings and other previously used oil; that the failure of petitioners to disclose that their oil is made from previously used oil has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that such oil is new and unused made from virgin crude oil; and that such failure has a tendency and capacity to cause such members of the public to purchase petitioners' oil as a result of the erroneous and mistaken belief so engendered. These crucial findings were adopted by the Commission. They were adequately sustained by evidence adduced upon the hearing and therefore must stand on review. It may be that lubricating oil does not wear out with use. It may be that use does not change the chemical composition or molecular structure of oil. It may be that contamination from use and additives put into oil by the prior producer are eliminated by the re-refining process of petitioners. And it may be that the oil sold by petitioners is just as good in quality as lubricating oil produced from virgin crude. But the public is entitled to know the facts with respect to the lubricating oil sold by the petitioners being produced from previously used oil and then make its own choice with respect to purchasing such oil or oil produced from virgin crude, even though the choice is predicated at least in part upon ill-founded sentiment, belief, or caprice. Federal Trade Com-

mission v. Algoma Lumber Co., 291 U.S. 67. And therefore the practice of the petitioners in marketing their re-refined lubricating oil in containers indistinguishable from those used generally to market lubricating oil refined from virgin crude, without any disclosure that it is made from previously used oil, constitutes a deceptive practice within the intent and meaning of section 5(a) of the Federal Trade Commission Act, as amended, 52 Stat. 111, 15 U.S.C.A. §45(a). Mohawk Refining Corp. et al. v. Federal Trade Commission, CA-3, ...F.(2d)....; Royal Oil Corp., et al. v. Federal Trade Commission, CA-4, ...F.(2d)....

Petitioners urge further that the order of the Commission is invalid because the purchasing public is not prejudiced by their methods of competition since the public preference is for quality in lubricating oil and not for any particular origin; because the competitors of petitioners are not prejudiced by the methods of competition which petitioners practice since petitioners do not enjoy any unfair advantage over their competitors; because enforcement of the order would result in actually restricting competition since it would destroy the business of petitioners and other re-refiners and thereby eliminate them as potential competitors of the major oil companies; because it is contrary to public policy to require useless disclosures which would result in injury to a company engaged in the business of re-refining oil and selling it in interstate commerce; and because it would result in wasting unnecessarily a precious natural resource. The general trend of the argument in support of the several grounds of challenge to the order is that the practices of petitioners do not prejudice the public; that they do not prejudice the competitors of petitioners; that disclosure would result in injury to the business of petitioners; and that disclosure would result in waste of a natural resource. But section 5(a) of the Act, supra, as amended in 1938, declares unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce to be unlawful; and with exceptions not having any present material bearing, it empowers the Commission to

prevent such methods, acts, or practices. Under the statute, as amended, the Commission is vested with power to prevent the use of unfair methods of competition in commerce and also to prevent the use of unfair or deceptive acts or practices in commerce. Under the enlarged sweep of the statute, the Commission may take appropriate action to prevent unfair or deceptive practices in commerce which are inimical to the public interest. Thomas v. Federal Trade Commission, 116 F.(2d) 347; Wolf v. Federal Trade Commission, 135 F.(2d) 564; Globe Cardboard Novelty Co. v. Federal Trade Commission, 192 F.(2d) 444; Koch v. Federal Trade Commission, 206 F.(2d) 311. The vice in the acts and practices of petitioners lies in the deception of the purchasing public of lubricating oil with respect to the oil sold by petitioners being re-refined oil instead of refined oil from virgin crude. And that vice constitutes an unfair and deceptive business practice within the intent and meaning of Section 5 of the Act, supra. Mohawk Refining Corp. et al. v. Federal Trade Commission, supra; Royal Oil Corp. v. Federal Trade Commission, supra.

A decree will be entered affirming and enforcing the order of the Commission.

BREITENSTEIN, *Circuit Judge* (dissenting).

The majority opinion sustains the Federal Trade Commission in requiring the manufacturer of an admittedly high quality domestic product to disclose in its advertising and on its container labels the source of its product. It does so in the absence of any claim that such manufacturer has ever made a deceptive or misleading statement in connection with the marketing of the product, re-refined lubricating oil. A deceptive practice is said to result from the marketing of the product "in containers indistinguishable from those used generally to market lubricating oil refined from virgin crude, without any disclosure that it is made from previously used oil." The deception is inferred from the assumption that the buying public prefers a lubricant produced from so-called virgin crude oil.

Certain facts shown by the uncontradicted evidence are pertinent. After crude oil is taken from the ground it is refined first to secure the more volatile distillates such as gasoline. The residuum is then refined again to obtain lubricating oils. Oil does not lose its chemical composition or its molecular structure by use. It does not wear out. The petitioner takes oil which has been drained from automobile crankcases and refines it just as the residuum of crude oil is refined after the capture of the more volatile distillates. The product so obtained has as high quality as that obtained from the residuum of the gasoline distillation.

Many minerals are processed and reprocessed and used and reused over and over again.[1] In this regard oil is no different from iron, gold and silver. The saving, accumulation, reprocessing and re-use of dental gold, silver ornaments and automobile steel does not differ in basic concept from the similar operations in regard to oil disclosed by this record. The assumption that a purchaser is deceived when he buys a good oil derived from a secondary processing operation is no different from an assumption that a purchaser of a new automobile is deceived if the steel in that automobile has been derived from the processing of scrap iron obtained from a junk yard.

Section 5(a) of the Federal Trade Commission Act, as amended,[2] empowers and directs the Commission to prevent the use of "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce." Here the unfair method and the unfair or deceptive practice are said to arise from the use of the same type container as that used by the manufacturers who produce from virgin crude and from the failure to disclose on the container that the lubricant is produced from previously used oil. There is nothing unfair or deceptive in using the same, common tin can type of container that is used for a multitude of

[1] The most common use and re-use of a natural resource probably occurs in the utilization of water.

[2] 15 U. S. C. § 45(a).

products. The action of the Commission depends solely on the fact that the source of the oil is not disclosed.

With due deference to administrative expertness in fact finding, I see nothing in the record to sustain a finding that the public prefers lubricating oil produced from virgin crude. As testified, in substance, by the only witness who covered the attitude of the public,[3] the purchaser desires quality and buys by brand names. Granting that a purchaser is entitled to get what he asks for, even if he is put off with something as good or better,[4] quality is material in determining whether there is customer deception in circumstances where there is no misrepresentation. The fact that a buyer desires a good oil or a brand oil does not mean that he has any interest in the origin of that oil. The assumption that the public prefers a lubricant produced from virgin crude does not follow from the fact that the public seeks to buy a good oil. Yet the Commission makes such an assumption and from it finds a deception.

The product involved here is admittedly of high quality and the petitioner has admittedly made no false statements in regard to either the product or its use. Hence this is not a case for the Commission to exercise its well-recognized negative power of preventing falsity by forbidding certain conduct. Instead it is one where the Commission exercises an affirmative power to require a statement as to origin for the prevention of a falsity which is not shown to exist.

In the foreign origin cases the power of the Commission to require an affirmative disclosure of origin has been upheld.[5] In such cases the assumption of a popular preference for homemade goods is entirely reasonable and is supported

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[3] The witness, a distributor for a major oil company, was called by and testified for the Commission.

[4] See Ohio Leather Co. v. Federal Trade Commission, 6 Cir., 45 F. 2d 39, 41.

[5] Eg. L. Heller & Son v. Federal Trade Commission, 7 Cir., 191 F. 2d 954; American Tack Co. v. Federal Trade Commission, 2 Cir., 211 F. 2d 239.

by the provision of the tariff laws requiring the marking of imported goods with the name of the country of origin.[6]

Royal Oil Corporation v. Federal Trade Commission, 4 Cir., ... F.2d ..., involves reclaimed, not re-refined oil,[7] and did not discuss the issues raised in this case. It is obvious that the sale of reclaimed oil without appropriate disclosure may be a deception. The same conclusion does not follow when the oil is re-refined as then the quality is as high as that found in oil produced from virgin crude.

Mohawk Refining Corporation v. Federal Trade Commission, 3 Cir., ... F.2d ..., affirmed an order similar to that involved here and did so in a case concerning re-refined oil. Reliance was placed on the statement in Federal Trade Commission v. Algoma Lumber Co., 291 U.S. 67, 78, that the public is entitled to get what it chooses, though the choice be dictated by caprice or ignorance. Algoma was a case of mislabeling.[8] Neither in Mohawk nor in the case at bar was there any false labeling. Although the right to make a capricious or ignorant choice is protected against misrepresentation, the recognition of such right does not require that a manufacturer foresee caprice or ignorance and not only refrain from misrepresentation but also affirmatively state every fact regarding his product which might conceivably be deemed important by the prejudiced and uninformed.

Mohawk quotes approvingly from P. Lorillard Co. v. Federal Trade Commission, 4 Cir., 186 F.2d 52, 58, that: "To tell less than the whole truth is a well known method of deception ..." The validity of such statement is unquestionable but it has no applicability. The omission here of the statement of source has no relation to the quality or usability of the product. Nondisclosure may amount to a

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[6] See 19 U. S. C. § 1304.

[7] Reclaimed oil is used oil which has been strained or otherwise treated to remove contaminants. Re-refined oil is oil that has been produced by a refining process similar to that used in producing oil from virgin crude.

[8] "Yellow pine" lumber was falsely labeled as "white pine."

deceptive practice when it is accompanied by an affirmative act calculated to deceive, when it has a bearing on quality or usability, or when the nondisclosed facts pertain to national policy. None of these situations is found here.

It may be that advertisements and labels should be much more informative than they ordinarily are in current custom and practice. But Congress has never given to the Commission unrestricted power affirmatively to require informative statements. Its pertinent power is limited to the prevention of unfair methods of competition and unfair or deceptive acts or practices in commerce. Granting that the Commission is the expert body to determine the remedy necessary to eliminate such methods or practices,[9] nevertheless, the affirmative function of requiring informative disclosures may only be exercised to prevent unfairness or deception.[10] Believing as I do that nondisclosure of source of origin of product, standing alone and unaccompanied by any of the factors which I have mentioned, does not constitute unfairness or deception, I am brought to the conclusion that there is no rational basis for the findings, and no legal basis for the order, of the Commission. It is not necessary to comment on the far-reaching implications of the Commission's action under present conditions wherein scientific advances establish methods of reprocessing without loss of quality and thus permit the use and re-use of many substances which are in limited supply.

I most respectfully dissent from the opinion of my associates.

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[9] Jacob Siegel Co. v. Federal Trade Commission, 327 U. S. 608, 612.

[10] Cf. Alberty v. Federal Trade Commission, D. C. Cir., 182 F. 2d 36, 39, cert. denied 340 U. S. 818.